

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 JOHN LUCKETT,

5 Plaintiff,

6 v.

7 UNITED TITLE COMPANY, INC., *et al.*,

8 Defendants.  
9

Case No. 2:15-CV-00168-APG-VCF

**ORDER**

(DKT. #3, #9)

10 On July 2, 2015, Magistrate Judge Ferenbach entered a Report & Recommendation (Dkt.  
11 #8) recommending I dismiss plaintiff Lockett's amended complaint with prejudice. Lockett  
12 objected to that recommendation. (Dkt. #9.) I have conducted a de novo review of the issues set  
13 forth in the Report & Recommendation. 28 U.S.C. § 636(b)(1). Judge Ferenbach's Report will be  
14 modified as follows:

15 1. At page 2, lines 7-8, the Report states that "Hale Lane was hired to represent Lockett  
16 through Attorney Liability Protection Society, Inc." That sentence is revised to say "Hale Lane  
17 was hired to represent United Title and Chicago Title through Attorney Liability Protection  
18 Society, Inc."

19 2. At page 11, lines 4-5, the Report states: "The factual allegations of Lockett's  
20 negligence claim survive the court's review." That sentence is revised to say: "The factual  
21 allegations of Lockett's negligence claim cannot survive the court's review."

22 3. I part with Judge Ferenbach's recommendation of dismissal with prejudice of all of  
23 Lockett's claims. "A pro se litigant must be given leave to amend his or her complaint, and some  
24 notice of its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could  
25 not be cured by amendment." *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). Judge  
26 Ferenbach's Report explains in detail the deficiencies of Lockett's amended complaint. I agree  
27 with those findings. However, it might be possible for Lockett to cure some of the deficient  
28

1 claims. If United Title and Chicago Title truly owed Lockett some duty based upon a court order  
2 requiring them to hold funds on his behalf,<sup>1</sup> Lockett might be able to assert claims for  
3 misappropriation of funds, embezzlement, and negligence. Given that the record is unclear and  
4 confusing, at this point, I must allow Lockett one final chance to amend his complaint to assert  
5 valid claims, if facts exist to support them. However, I agree with Judge Ferenbach that Lockett's  
6 claims for fraud, extortion, intentional infliction of emotional distress, and bad faith should be  
7 dismissed with prejudice because those claims cannot be salvaged. Lockett must read Judge  
8 Ferenbach's Report carefully, so he understands the deficiencies in his remaining claims.

9 IT IS THEREFORE ORDERED that Report & Recommendation (**Dkt. #8**) is **accepted in**  
10 **part** and modified as set forth above. Lockett's amended complaint is dismissed. His claims for  
11 misappropriation of funds, embezzlement, and negligence are dismissed without prejudice. His  
12 claims for fraud, extortion, intentional infliction of emotional distress, and bad faith are dismissed  
13 with prejudice.

14 IT IS FURTHER ORDERED that on or before November 23, 2015, Lockett may file a  
15 second amended complaint that cures the deficiencies in his claims of misappropriation of funds,  
16 embezzlement, and negligence, as discussed in Judge Ferenbach's Report, if he has sufficient  
17 facts to justify such claims. Given that this is Lockett's second chance to amend his complaint, if  
18 he fails to cure the deficiencies in those claims, they may be dismissed with prejudice. Similarly,

19 ////

20 ////

21 ////

---

22  
23  
24 <sup>1</sup> The record is confusing whether the title companies were required to hold funds for Lockett and,  
25 if so, why and for how long. For instance, in both his amended complaint and objection, Lockett alleges  
26 that the Nevada state probate court ordered the title companies to hold funds in an escrow account for his  
27 benefit. (Dkt. #6 at 2, ¶1; Dkt. #9 at 3.) Papers filed in Nevada state court seem to confirm money was  
28 being held for Lockett's benefit. (Dkt. #9-1 at 3, ¶7; *Id.* at 29.) However, California state court papers  
indicate that the judgment Lockett was relying on was vacated. (Dkt. #9-1 at 26.) Some of the court  
papers Lockett attached to his objection are incomplete. (*See, e.g.*, Dkt. #9-1 at 28-30.) Therefore, the  
facts of this case are unclear.

1 if Lockett does not file his second amended complaint by November 23, 2015, this case will be  
2 closed.

3 DATED this 26<sup>th</sup> day of October, 2015.

4 

5 \_\_\_\_\_  
6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28